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March 16, 2012

**VIA ELECTRONIC AND CERTIFIED MAIL**

Mr. Anthony Herman  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

**Re: MUR 6523—Response of Wil Cardon for U.S. Senate (Kevin Wolfe, Treasurer) to David Smith's Complaint**

Dear Mr. Herman:

David Smith believes Wil Cardon's father owes him money for plumbing services performed in 1989. Apparently still experiencing acrimony after 23 years,<sup>1</sup> Mr. Smith recently filed a deeply flawed complaint with the Commission against Wil Cardon for U.S. Senate that is characterized by its penchant for wrongly assuming critical facts.

**Mr. Smith's "Corporate Contribution" Accusation Is False.**

Mr. Smith's principal accusation is that the personal funds Wil Cardon has loaned to his campaign were originally derived from a revolving promissory note extended by Comerica Bank to Boa Sorte, L.P. and Rio Claro, Inc.<sup>2</sup> Wil Cardon has indeed loaned personal funds to his campaign,<sup>3</sup> and Comerica Bank did extend a line of credit to Boa Sorte and Rio Claro.<sup>4</sup> But Mr. Smith can connect these unrelated transactions only by making an assumption for which he has no evidence: "if the funds from the Comerica loan to Boa Sorte and Rio Claro were paid out to Cardon as a loan or advance ... and then used to fund Cardon's repeated personal loans to his

<sup>1</sup> Dan Nowicki, *Wil Cardon Accused of FEC Violation*, The Arizona Republic (Jan. 20, 2012) (stating that David Smith "disclosed a longstanding business grievance with the Cardon family. Smith was a plumbing contractor for Cardon Homes Corp., which was one of Cardon's father's businesses. He claims he is still owed \$74,000 from when the homebuilder went bankrupt in 1989. Smith said he was disturbed to learn that Cardon, a real-estate investor, was willing to invest large sums of his own cash in his Senate run. 'I just figured if he's got that much to put in his campaign, maybe the Cardon family could pay some of the bills that they owe their subcontractors,' Smith said."), available at <http://www.azcentral.com/arizonarepublic/local/articles/2012/01/20/20120120wil-cardon-accused-fec-violation.html#ixzz1no5YJ2V6>.

<sup>2</sup> David Smith Compl. at 2-3.

<sup>3</sup> Cardon Aff. ¶¶ 2-3.

<sup>4</sup> Frick Aff. ¶ 9.

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campaign, they would constitute corporate contributions..."<sup>5</sup> Mr. Smith's blind conjecture should be rejected.

Boa Sorte and Rio Claro sought the line of credit strictly for business purposes. Boa Sorte and Rio Claro are large entities<sup>6</sup> that have maintained available lines of credit with local banks to finance occasional short-term business needs.<sup>7</sup> Boa Sorte and Rio Claro sought to begin a consolidation of these financial relationships by initiating discussions in 2009 with Comerica Bank and other banks about opening a business line of credit.<sup>8</sup> Negotiations about a line of credit from Comerica Bank, along with associated preparation tasks, continued from October 2009 to May 2011, when the line of credit was ultimately extended.<sup>9</sup> Boa Sorte and Rio Claro's need and negotiations for a line of credit therefore long pre-dated Senator Jon Kyl's retirement announcement and Wil Cardon's contemplation of a U.S. Senate candidacy.

Even more importantly, Boa Sorte and Rio Claro have used the line of credit only for business purposes. Boa Sorte and Rio Claro did not utilize the Comerica Bank line of credit until July 2011, when \$377,377 was drawn to finance part of a loan by Boa Sorte to a third-party real estate partner.<sup>10</sup> To fund short-term business expenses in December 2011, they also made two additional draws totaling \$1.5 million, which were repaid in full on January 12, 2012.<sup>11</sup> Boa Sorte and Rio Claro have not otherwise utilized the Comerica Bank line of credit, and no portion of the line of credit extended by Comerica Bank to Boa Sorte and Rio Claro was paid to Wil Cardon.<sup>12</sup> In fact, the entities have not paid any funds to Wil Cardon in 2011 or 2012.<sup>13</sup> Boa Sorte and Rio Claro could not, then, have made an illegal corporate contribution to Wil Cardon in the manner Mr. Smith describes.

#### Mr. Smith's "Excessive Loan" Accusation Is Untrue

Mr. Smith's other accusation is that Comerica Bank gave an "excessive" or insufficiently collateralized loan to Boa Sorte and Rio Claro.<sup>14</sup> Mr. Smith again makes a faulty assumption here, this time by asserting that Comerica Bank only required a single residence as collateral.<sup>15</sup> Mr. Smith simply failed to check property records thoroughly. In reality, Comerica Bank

<sup>5</sup> David Smith Compl. at 3.

<sup>6</sup> Frick Aff. ¶¶ 3-4.

<sup>7</sup> Frick Aff. ¶ 5.

<sup>8</sup> Frick Aff. ¶ 7; Response and Decl. of Comerica Bank ¶¶ 4(b)-(c).

<sup>9</sup> Frick Aff. ¶¶ 8-9.

<sup>10</sup> Frick Aff. ¶ 10. See also Supplemental Response and Decl. of Comerica Bank Att. A. Please note that an earlier disbursement listed on the Supplemental Response of \$12,750 on May 25, 2011 was an origination fee.

<sup>11</sup> Frick Aff. ¶ 11. See also Supplemental Response and Decl. of Comerica Bank Att. A.

<sup>12</sup> Frick Aff. ¶¶ 12; Cardon Aff. ¶¶ 4. See also Supplemental Response and Decl. of Comerica Bank Att. A.

<sup>13</sup> Frick Aff. ¶¶ 12-13; Cardon Aff. ¶¶ 4-5.

<sup>14</sup> David Smith Compl. at 3-4.

<sup>15</sup> See David Smith Compl. at 3-4.

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perfected security interests in four separate properties.<sup>16</sup> The "loan-to-value ratio" was roughly 70 percent,<sup>17</sup> which indicates the arrangement was commercially reasonable.<sup>18</sup> Comerica Bank therefore did not make an "excessive" or insufficiently collateralized loan to Boa Sorte and Rio Claro, as Mr. Smith claims.

### Conclusion

Mr. Smith's bitterness over 23-year-old plumbing debts drove him to overlook the baseless assumptions in his own complaint. But the facts here demonstrate that Wil Cardon loaned only personal funds to his campaign, that Boa Sorte and Rio Claro could not have made an illegal corporate contribution to Wil Cardon, and that Comerica Bank did not make an "excessive" loan to Boa Sorte and Rio Claro. The Commission should therefore find no reason to believe that a violation occurred and should dismiss this Matter.

Respectfully Submitted,



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Caplin & Drysdale, Chtd.



Matthew T. Sanderson  
Caplin & Drysdale, Chtd.

<sup>16</sup> Response and Decl. of Comerica Bank ¶ 4(b), (d).

<sup>17</sup> Response and Decl. of Comerica Bank ¶ 4(b).

<sup>18</sup> See 12 C.F.R. § 365.2 app. A (establishing a "supervisory" loan-to-value limit of 85 percent for improved property).

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